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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 631

WALTER E. ALLEN,

Petitioner,

vs.

M. LUCILLE ALLEN,

Respondent

MOTION FOR LEAVE TO FILE JURISDICTIONAL STATEMENT

Comes now your petitioner, Walter E. Allen, and moves this Court for permission to file the attached jurisdictional statement, and in support of such motion states:

That the petition for certiorari, the supporting brief and the certified transcript of record in the above entitled cause was filed in this Court on March 7, 1949, within the time allowed by the rules of this Court.

That the petition for allowance of an appeal, presented to the Chief Justice of the Supreme Court of the State of Oklahoma included a jurisdictional statement. Such statement was not separately identified so that it could be con-

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veniently printed, as required by the rules of this Court.

Your petitioner, therefore, respectfully asks leave of this Court to file the attached jurisdictional statement in order that it may be separately printed, according to the rules of this Court.

LYNN ADAMS,
ROBERT E. SHELTON,
Attorneys for Petitioner, Walter E. Allen.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 631

WALTER E. ALLEN,

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Respondent

JURISDICTIONAL STATEMENT

This is an appeal from a five to four decision of the Oklahoma Supreme Court, entered September 21, 1948 (a copy of the opinion is attached hereto and marked Exhibit "A"), affirming a judgment of the District Court of Oklahoma County, Oklahoma (no opinion filed, see Tr. p. 50), refusing to accord full faith and credit to a judgment rendered in a divorce proceedings in a court of competent jurisdiction of a sister state, the State of Nevada.

The dissenting justices of the Oklahoma Supreme Court, in a dissenting opinion (a copy of which is attached hereto, and marked Exhibit "B"), expressed the view that the Nevada judgment being valid upon its face, the Oklahoma courts were constitutionally bound to accord it full faith and credit. A copy of an opinion in a connected case, *Allen*

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v. *Allen,* 162 P. 2d 193, is hereto attached and marked Exhibit "C".

Your petitioner contends that this Court has jurisdiction to review the decision of the Oklahoma Supreme Court, Exhibit "A" under Section 237 of the Judicial Code, 43 Stat. 937, 28 U. S. C. A. 344, when such decision is in direct conflict with the Full Faith and Credit Clause of the Federal Constitution, Art. 4, Sec. 1, and the implementing statute of the United States, R. S. Sec. 905, 28 U. S. C. A. 687. *Titus* v. *Wallick,* 306 U. S. 344; *Morris* v. *Jones,* 329 U. S. 545.

The application for permission to appeal from the judgment of the Oklahoma Supreme Court entered September 21, 1948, was presented to the Chief Justice of that court and was allowed on January 3, 1949 (Tr. p. 153 and 160).

Your petitioner believes that a writ of certiorari should be granted on the grounds that although petitioner relied upon his Federal right to have his Nevada judgment recognized in the Oklahoma courts, the Oklahoma Supreme Court under a misapprehension and misinterpretation of the Nevada judgment, and under the guise of Oklahoma procedural law, refused to accord the Nevada judgment the same faith and credit it had by law or usage in the State of Nevada. *Angel* v. *Bullington,* 330 U. S. 183; *Norris* v. *Alabama,* 294 U. S. 587; *Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine* v. *Michaux,* 279 U. S. 737; *Aetna Life Ins. Co.* v. *Dunkin,* 266 U. S. 379; *Davis* v. *Wechsler,* 263 U. S. 22, 24; *Creswill* v. *Knights of Pythias,* 225 U. S. 246.

Respondent sued petitioner upon a contract for delinquent alimony in the District Court of Oklahoma County, Oklahoma. As the basis of his liability and as a defense to respondent's action petitioner offered in evidence, a duly authenticated copy of a divorce decree of the Second Judicial District Court of Washoe County, Nevada, which judgment

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specifically provided that the contract relied upon by respondent had been legally extinguished by merger into said divorce decree. The decree was accepted into evidence, and your petitioner asked the trial court to accord it the same faith and credit to which it was entitled in the court of Nevada which rendered it. This the trial court refused to do; petitioner excepted (Tr. p. 48). Thereafter, a motion for new trial was filed and petitioner's Federal right was again urged and overruled, and exceptions taken (Tr. 49, 50, and 51). An appeal was taken to the Supreme Court of the State of Oklahoma. The first question presented by petitioner on appeal was as follows: "This is a Nevada Judgment, the validity of which is controlled by Nevada law, and Oklahoma courts are constitutionally bound to give full faith and credit to the judgment of its sister state Nevada, unless the judgment is void upon its face under Nevada law" (Tr. 84).

The Oklahoma Supreme Court affirmed the judgment of the Oklahoma District Court refusing to accord full faith and credit to the Nevada judgment, and in its opinion misinterprets the Nevada judgment and labels it an amended, corrected or changed judgment, and under guise of Oklahoma procedural law endeavored to sustain its decision refusing full faith and credit to the Nevada judgment (Tr. 124 to 134). As a matter of fact, the Nevada judgment was not an amended, corrected or changed judgment, as so interpreted by the Oklahoma Supreme Court, and being valid upon its face (see dissenting opinion, Exhibit "B"), was not subject to interpretation by the Oklahoma Supreme Court, and when petitioner relied upon his Federal right to have such judgment recognized and is refused, this Court has jurisdiction to inquire not only whether such right has been denied in express terms but also whether such right has been denied by misinterpretation and under local procedural law, local policy, or in substance and effect. *Angel*

v. *Bullington*, 330 U. S. 183; *Norris* v. *Alabama*, 294 U. S. 587; *Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine* v. *Michaux*, 279 U. S. 737; *Aetna Life Ins. Co.* v. *Dunkin*, 266 U. S. 379; *Davis* v. *Wechsler*, 263 U. S. 22, 24; *Creswill* v. *Knights of Pythias*, 225 U. S. 246.

Your petitioner, therefore, respectfully submits that the nature of this case, and the Oklahoma decisions appealed from, are such as to bring the case within the jurisdictional provisions herein relied on, and that the Federal questions involved are substantial.

LYNN ADAMS,
ROBERT E. SHELTON,
Attorneys for Petitioner.

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EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32,902

WALTER E. ALLEN, *Plaintiff in Error,*

vs.

M. LUCILLE ALLEN, *Defendant in Error*

SYLLABUS

1. Where a party to an action in this state offers in evidence, as a defense to said action, a judgment rendered in a court of another state, which judgment would not be valid according to the laws of this state, the party relying upon such judgment must prove its validity according to the laws of the state where it was rendered before it can be accorded full faith and credit as a judgment of a court of a sister state.

2. Laws of a sister state, including its general statutes, in absence of pleading and proof thereof, are presumed to be same as laws of this state.

3. In this state proceedings to correct a mistake or omission of the clerk or irregularity in obtaining a judgment after the term at which it was rendered are by motion upon reasonable notice to the adverse party, or party that may be interested in such proceeding; and a nunc pro tunc order rendered upon such motion without notice is void.

Appeal from the District Court of Oklahoma County, Oklahoma

Hon. A. P. Van Meter, Judge

Affirmed

Robert E. Shelton, Oklahoma City, for Plaintiff in Error.
Tom W. Garrett, Oklahoma City, for Defendant in Error.

LUTTRELL, *J.:*

M. Lucille Allen, plaintiff below, brought this action to collect unpaid installments of alimony, or separate property

payments, due under a contract between herself and her husband. She recovered judgment and defendant Walter E. Allen appeals.

This is the second time this court has considered the question of plaintiff's right to collect delinquent installments or payments under this contract. In Allen *v.* Allen, 196 Okla. 36, 162 P. 2d 193, we held that the contract for the settlement of property rights, which provided for the payment of $140.00 per month, was not merged in and extinguished by the judgment of the district court of the state of Nevada in which the judgment of divorce was rendered, but that it was still a binding and enforceable contract between the parties, and reversed the judgment of the trial court and remanded the cause. After remand the trial court rendered judgment against defendant for the amount of the delinquent installments involved in this action, and thereafter he made payments up to January 1, 1946. When he failed and refused to pay any further installments plaintiff brought this action on April 12, 1946.

After the decision of this court in Allen *v.* Allen, supra, and on April 6, 1946, defendant applied to the Nevada court for a nunc pro tunc order to correct the judgment entered in the divorce proceeding. In the first decree of divorce, dated August 4, 1939, the trial court ordered that the agreement between the parties be adopted, approved, and confirmed by the court, and the parties were directed to comply therewith and to execute the terms thereof. Pursuant to the application for the order nunc pro tunc the Nevada court corrected the decree as prayed for by incorporating the contract in its decree as a part thereof, and providing as follows:

> "And said contract is legally extinguished and merged into this decree and the parties are hereby directed to comply with the terms of this decree in lieu of said contract."

This order nunc pro tunc was entered April 29, 1946.

In his answer to plaintiff's petition in the instant case defendant pleaded the order nunc pro tunc, alleging that the same legally extinguished plaintiff's contract and barred any action by the plaintiff on the contract.

Plaintiff, in her reply, alleged among other things that the amendment to the judgment in the Nevada court, relied upon by the defendant, was made without notice to plaintiff and was void and of no effect and not binding on plaintiff.

At the trial of the case it was stipulated by the parties that the Nevada court entered the nunc pro tunc order on April 29, 1946, upon the application of defendant, and that said order was entered in an ex parte proceeding without notice to plaintiff. It was further stipulated that the laws of Nevada were the same as the laws of Oklahoma "as to the authority of the trial court to approve or disapprove contracts entered into between the parties offered in a divorce proceeding."

Defendant, on appeal, contends that the judgment as amended by the order nunc pro tunc is a Nevada judgment, the validity of which is controlled by Nevada law, and that the Oklahoma courts are constitutionally bound to give full faith and credit to such judgment unless the same is void upon its face. He asserts that the validity of that judgment must be judged by the laws of the state of Nevada, where the judgment was rendered, and not by the laws of the forum, citing Freeman on Judgments, 5th Ed. section 1387; 31 Am. Jur. Judgments, section 534; Williams *v.* North Carolina, 31 U. S. 287, and other similar authorities.

Plaintiff, on the other hand, contends that since the Nevada laws were not proven they are presumed to be the same as those of this state, and that under the laws of this state the judgment is void for the reason that no notice of the hearing on the application for the order nunc pro tunc was given to plaintiff.

It is the general rule that where the validity of a judgment rendered in one state is called in question in another state a want of jurisdiction over either the person or subject matter is open to inquiry. Milliken *v.* Meyer, 311 U. S. 457, 85 L. Ed. 278, 61 Sup. Ct. 339.

In 34 C. J. p. 1128, section 1603, it is said:

> "The judgment of a court of one state, when sued on, pleaded, or introduced in evidence in another state, is entitled to receive the same faith, credit, and respect

that is accorded to it in the state where rendered so that if valid and conclusive there, it is so in all other states. But a judgment from another state is entitled to no greater effect or finality than would be accorded to it in the state where rendered; and hence if it would there be inconclusive, impeachable, or reexaminable, it will receive no greater consideration or measure of finality in other states. The validity and effect of a judgment must therefore be determined by reference to the laws of the state where it was rendered."

And in 50 C. J. S. p. 501, section 893b it is said:

"Where a judgment recovered in a court of general jurisdiction in another state is relied on, and the record thereof is duly authenticated or certified, and produced in evidence, it will be presumed that the court had jurisdiction of the subject matter and the parties, in the absence of proof to the contrary or of a showing to the contrary by the record itself; and it will be presumed, although not conclusively, that the necessary jurisdiction was acquired properly."

In Freeman on Judgments, 5th Ed. Vol. 3, section 1389, the author says:

"In the absence of circumstances justifying a presumption of validity, a judgment of another state, when offered in evidence, ought to be shown to be valid. If it would not be valid if rendered in the state where it is offered in evidence, the party who relies upon it must show that it is valid according to the laws of the state within whose jurisdiction it was pronounced.

This rule is supported by Harn *v.* Cole, 20 Okla. 553, 95 P. 415; McNair *v.* Underwood, 55 Okla. 585, 155 P. 553; 35 C. J. 1115, 1129, sections 1585, 1603, and 50 C. J. S. 475, section 889.

Under the rule announced by the above authorities, which is unquestionably the general rule, it was incumbent upon defendant, in order to sustain his judgment after he admitted that no notice of the application for the order nunc pro tunc

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was given plaintiff, to make proof that under the law of Nevada such notice was not required, and that the amendment of the judgment without notice was valid under the laws of the state of Nevada. This he wholly failed to do.

Under section 484, Title 12, O. S. A., the laws of other states are facts to be established by competent evidence, and the courts of this state cannot take judicial notice thereof. Atchison, T. and S. F. Ry. Co. *v.* Lambert, 32 Okla. 665, 123 P. 428.

We have many times held that in the absence of pleading and proof as to the laws of a sister state, including its general statutes, they are presumed to be the same as the laws of this state. Hinds *v.* Atlas Acceptance Corp., 178 Okla. 474, 63 P. 2d 29; Sivils *v.* Taylor, 12 Okla. 47, 69 P. 867; Hoshaw *v.* Lines, 30 Okla. 67, 118 P. 583; Kennedy *v.* Chadwell, 193 Okla. 304, 142 P. 2d 979.

In Jones *v.* Gallagher, 64 Okla. 41, 166 P. 204, we held that the power to correct mistakes in the entries of judgments or orders was expressly granted by subdivision 3 of 12 O. S. 1941, section 1031, and that the statutory proceeding to correct mistakes or omissions of the clerk was, by 12 O. S. 1941, section 1032, required to be upon motion upon reasonable notice given to the adverse party or his attorney in the action. To the same effect is Co-Wok-Ochee *v.* Chapman, 76 Okla. 1, 183 P. 610.

In Lewis *v.* Ward, 101 Okla. 146, 223 P. 839, we held that a nunc pro tunc order entered without such notice to the adverse party was void.

Defendant argues that Oklahoma has recognized the inherent right of a court to correct its judgments by nunc pro tunc orders and that such power exists independant of such statutory provision, citing Hawks *v.* McCormack, 180 Okla. 569, 71 P. 2d 724. He further argues that notice is not necessary and is not required to be given to one whose interest will not be adversely affected by the amending of the judgment, citing Franklin *v.* Hunt Dry Goods Co., 190 Okla. 296, 123 P. 2d 258.

In Hawks *v.* McCormack, supra, evidently notice was given, since the opposing party moved in the trial court to strike the application for order nunc pro tunc on the

ground that the plaintiff had failed to comply with the statutory provision applicable in such cases, and that the journal entry showed that it reflected the true judgment of the court.

In Franklin *v.* Hunt Dry Goods Co., supra, the plaintiff, who had obtained a default judgment, orally moved the court to set aside the default at the same term at which it was rendered, and the court set the default judgment aside. In that case we held that the defendant in such proceeding was not an adverse party, for the reason that the vacating of a judgment against him could not, under any circumstances, be considered prejudicial to his rights or to affect him adversely. Obviously in such case no good reason existed why the defendant should be given notice and an opportunity to resist the application to vacate a judgment theretofore taken against him. The purpose of the notice, in all cases where it appears that the other party to the action may be prejudiced, or his rights affected, by the correction of the judgment, is to give such party an opportunity to be present and urge any objections he may have to a change in the judgment.

We have many times held that after the term at which a judgment was rendered the trial court loses control over the judgment, and is without jurisdiction to vacate, change, or modify it unless there is a substantial compliance with the terms of the statute, (12 O. S. 1941, sections 1932, 1933.) First National Bank *v.* Commissioners of Land Office, 127 Okla. 190, 260, P. 69; Hawkins *v.* Hawkins, 52 Okla. 786, 153 P. 844; Consolidated School Dist. No. 15 *v.* Green, 180 Okla. 567, 71 P. 2d 712. We hold that in all cases where a party to an action seeks to correct, modify or vacate the judgment rendered therein after the term at which such judgment was rendered, whether his application invokes the inherent or statutory authority of the court, notice to the opposite or adverse party is essential in order to give the trial court jurisdiction to act. This holding, as applied to the instant case, is based upon our assumption, due to the failure to plead and prove the laws of Nevada applicable thereto, that such laws are the same as the laws of this state, and that the term of court in which judgment was rendered

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had expired prior to the entry of the nunc pro tunc order.

In the instant case it is not only conceded but urged by the defendant that the judgment as corrected did change the rights of plaintiff under the judgment as originally entered, in that under the amended journal entry the amount payable to plaintiff might be changed on account of the financial condition of defendant, which it could not be under the contract, and that under the contract payments imposed upon defendant might be impressed upon his estate, whereas, if the contract was merged in the decree, the payments would end upon the death of either husband or wife.

Our conclusion is that under the law of this state as announced in our decisions above set forth, the order nunc pro tunc was void, and that the trial court was not required to give full faith and credit to the amended judgment as a valid judgment of a sister state, in the absence of proof adduced at the trial that the judgment was valid under the law of the state of Nevada. Upon the record as presented to this court the judgment was correct.

It is not necessary, in view of our determination, to pass upon the further question urged by plaintiff, that our first decision in Allen *v.* Allen, supra, is the law of the case, under the rule announced in Pinkerton *v.* Carter, 197 Okla. 95, 169 P. 2d 192, and Empire Oil & Refining Co. *v.* Fields, 188 Okla. 666, 112 P. 2d 395. We therefore do not pass upon that question.

Affirmed.

Justice Bayless having certified his disqualification, Honorable Jack L. Rorschach of Vinita was appointed in his stead.

Hurst, C. J., and Riley, Corn, JJ.: and Rorschach, SJ.: Concur.

Davison, V. C. J., and Welch, Gibson, and Arnold, JJ.: Dissent.

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32,902

WALTER E. ALLEN, *Plaintiff in Error,*

vs.

M. LUCILLE ALLEN, *Defendant in Error*

ARNOLD, V. C. J., Dissenting:

In my judgment the trial court of Oklahoma should have recognized and accorded full faith and credit to the judgment of the Nevada court, said judgment not being on its face or shown to be void. Its refusal to so recognize said foreign judgment constituted violation of the full faith and credit provision of the Constitution of the United States (Article 4, Sec. 1).

The majority fails to recognize the inherent power of all courts, including Oklahoma and Nevada, without notice and irrespective of statute, upon motion of either party or upon its own motion, to make their judgment reflect the true judgment of the court at the time the original judgment was entered, where, as here, the court had jurisdiction of the parties and the subject matter when the original judgment was entered, and the subject matter of the nunc pro tunc order was all of record when the original judgment was entered, and such order merely confirms the rights of the parties as they were established by the original judgment pronounced by the court, and as all parties knew them to be so established. Freeman on Judgments, Fifth Edition, Sections 121, 126; Lindsay *v.* Lindsay, 52 Nev. 26, 280 P. 95; Silva *v.* Second Judicial Dist. Court (Nev.), 66 P. 2d 422; Martin v. Ray (Cal.), 170 P. 2d 75; Hughes *v.* Hughes (Cal.) 168 P. 2d 429; Morse *v.* Morse (Mont.), 154 P. 2d 982; Bush *v.* Bush (Kan.), 150 P. 2d 168; Bastajean *v.* Brown (Cal.), 120 P. 2d 9; Hobson *v.* Dempsey Const. Co. (Iowa), 7 N. W. 2d 9; Benway *v.* Benway (Cal.), 159 P. 2d 682; Gottwals *v.* Rencher, 98 P. 2d 481; Annotation 67 A. L. R. 828, and as sup-

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plemented in 126 A. L. R. 956. See also Finley *v.* Finley, 189 P. 2d 334. This court has recognized this inherent right of the court in Mayer *v.* Kenner, et al., 195 Okla. 658; 163 P. 2d 991, Hawks *v.* McCormack, 180 Okla. 569, 71 P. 2d 724, and in Franklin *v.* Hunt Dry Goods Co., 190 Okla. 296, 123 P. 2d 258; wherein we held that the notice required under 12 OSA 1032 is not necessary, if it would be a useless thing, and stated that the only purpose of the statute is to protect one's adverse interest and is not required to be given to one whose interest cannot possibly be adverse to the result to be accomplished.

In this case both parties were before the Nevada Court in the divorce proceedings. The agreement between the parties with regard to their property settlement specifically provided that it was to be incorporated into the divorce decree; the agreement was introduced and the court was asked to carry out the wishes of the parties in this regard. This the Nevada court did, by stating from the bench that the property settlement "shall be approved, ratified and adopted" and "made a part of the decree." The rights of the parties were fixed by that judgment and at that time. The nunc pro tunc order does not change that judgment, nor the rights of the parties—it merely confirms them. The Nevada court in entering the nunc pro tunc order, was exercising the power, inherent in all courts, to make the record speak the truth by recording judicial action previously taken by it. This the Nevada court, and the Oklahoma courts could do upon motion of either party, or upon its own motion, and notice was not necessary. See Griffin *v.* Griffin, 327 U. S. 220, 233, 234.

I respectfully dissent.

Davison, C. J., Gibson and Welch, J. J. concur in my views.

EXHIBIT "C"

ALLEN v. ALLEN

No. 31730

SUPREME COURT OF OKLAHOMA

Sept. 18, 1945

Rehearing Denied Oct. 9, 1945

1. Husband and wife #280

Where Nevada divorce decree obtained by husband did not attempt to set out in detail the terms of Oklahoma contract between the parties settling their property rights, but merely approved the contract and directed that it be obeyed and executed, the contract was not extinguished by the decree and wife could enforce the contract in Oklahoma and was not required to sue on the decree as a foreign judgment.

2. Husband and wife #280.

Contracts made between spouses for the settlement of their property rights in contemplation of divorce are not to be stricken down or ignored upon technical grounds, but should receive every consideration commensurate with the decree entered.

Syllabus by the Court

When a husband and wife, residents of another state, enter into a contract in that state to settle their property rights in contemplation of divorce, and thereafter the husband sues for a divorce, in another state and in his petition for relief alleges the existence of the contract, without setting out its terms, and asks the court to ratify, approve, and adopt said contract, and where the wife answers and admits generally the husband's allegations in this respect, and the court grants the husband a divorce and in the decree provides "* * * that the agreement entered into between the parties hereto, dated August 4, 1939, should be approved, adopted and confirmed by this Court, and the parties should be directed to comply therewith and to execute

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the terms thereof," and orders "• • • that the agreement between the parties hereto, dated August 4th, 1939, be, and it is hereby approved, adopted and confirmed by this Court, and the parties hereto directed to comply therewith and to execute the terms thereof," held, when an action is brought in Oklahoma to recover for breaches of the contract, the contract was not merged in the judgment so as to put an end to it and require suit on the judgment.

Appeal from District Court, Oklahoma County; A. P. Van Meter, Judge.

Action by M. Lucille Allen against Walter E. Allen to enforce a contract between the parties for a settlement of property rights. Judgment for defendant, and plaintiff appeals.

Reversed and remanded.

Tom W. Garrett, of Oklahoma City, for plaintiff in error.

Campbell, Randolph, Mosteller & McElroy, of Oklahoma City, for defendant in error.

BAYLESS, Justice:

M. Lucille Allen appeals to this court from a judgment of the district court of Oklahoma County refusing her relief in an action which she filed against Walter E. Allen, formerly her husband, for the purpose of enforcing rights which she asserted under a contract entered into between them prior to their divorce which had for its purpose the settlement of their property rights.

This contract was entered into August 4, 1939, when the parties were residents of another state and provided two things for the benefit of the wife, in substance: (1) The payment of $140 per month beginning August 1, 1939, for the remainder of her life or until she should remarry; and (2) the continued carrying of a policy of life insurance on the husband's life with the wife as beneficiary. It is provided that this contract was intended to supersede an earlier contract and was to remain in force and effect if a divorce was obtained within three months. The husband went to Nevada and procured a divorce within three months. In his complaint in the divorce action he alleged, in substance, that the parties had entered into the contract, with-

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out giving any of its details, that said contract was just, fair, and reasonable and should be ratified, approved and adopted in lieu of making any other or different orders in relation to the subject matter thereof. In her answer to this complaint the wife admitted this allegation. A decree of divorce was granted the husband wherein the trial court found "* * * and further, that the agreement entered into between the parties hereto, dated August 4, 1939, should be approved, adopted and confirmed by this Court, and the parties should be directed to comply therewith and to execute the terms thereof," and ordered. "It is further ordered that the agreement between the parties hereto, dated August 4th, 1939, be, and it is hereby approved, adopted and confirmed by this Court, and the parties hereto directed to comply therewith and to execute the terms thereof." The record shows that the husband complied with the terms of the contract and judgment until he became delinquent on the installment due February 1, 1942. The trial court denied the wife relief upon the following ground:

"The court further finds that the said Nevada court, on August 10, 1939, approved and thereafter incorporated and adopted into, and made the said contract a part of the final divorce decree, and that the said contract of August 4, 1939, was thereby legally extinguished and is not now enforceable in Oklahoma."

(1) The question presented to us here is whether the plaintiff may sue in Oklahoma to enforce this contract or must sue in Oklahoma upon the judgment of the district court of Nevada as a foreign judgment.

The parties cite the same general line of cases, each finding support in certain of the cases and denying the applicability of the cases relied on by the other.

The wife places her chief reliance in the case of Elliott *v.* Dunham, 191 Okl. 395, 130 P. 2d 534; Seyler *v.* Seyler, 190 Okl. 253, 122 P. 2d 804; Murphy *v.* McElroy, 185 Okl. 388, 92 P. 2d 369, and other cases. The husband relies principally upon McRoberts *v.* McRoberts, 177 Okl. 156, 57 P. 2d 1175.

From these cases it appears that a distinction is made between agreements, which amount to no more than a stipu-

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lation of fact with respect to the issue of property rights when it is intended to submit such stipulation to the trial court for its guidance, and to consider its function served at that time, McRoberts *v.* McRoberts, supra; and other agreements wherein the parties expressly agree with respect to the division of their property rights in the nature of a contract which they intend shall govern thereafter whether submitted to the court or not, as in Murphy *v.* McElroy, supra, where it was not submitted, or in Elliott *v.* Dunham, supra, where it was submitted but the judgment of the court did not follow the contract in some respects and approved it in others. In the McRoberts case we held that the stipulation had fully served its purpose when it had been submitted to the trial court in the nature of evidence of the parties' wishes and that it was not thereafter enforceable in this State as a contract. In the Murphy *v.* McElroy case we held that a contract between the parties was binding and enforceable after the decree of divorce where it had not been submitted to the trial court and the trial court had not undertaken to make any order with respect to the property rights of the parties. In the Elliott *v.* Dunham case we held that such a contract when submitted to the trial court was not binding upon the court and in the particular instance wherein the trial court ordered matters different to the provision of the contract to that extent the contract was disapproved and ineffectual, but as to the parts of the contract which the court approved by not undertaking to order otherwise they remained valid and enforceable as contract rights after the divorce decree. In that case we understand that the trial court formally approved the provisions of the contract which it did not alter or supersede but did not incorporate them into the divorce decree in detail. In other words, it was necessary to have resort to the contract to determine what agreement in any particular instance the trial court had adopted or approved.

Therein lies the difference between the cases cited by the wife and the McRoberts case cited by the husband. The district court of Nevada did ratify and adopt and confirm the agreement between the parties with respect to their property rights but significantly ordered and directed them

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to obey and execute the provisions of the contract. It did not set the contract out in the decree and no one could determine what the rights of either party should be under this decree without reference to the contract. To the extent that the trial court below found that the district court of Nevada "incorporated and adopted into, and made the said contract a part of the final divorce decree" it is not sustained by the record. If that court had incorporated and adopted "into" and had made the said contract a literal part of the final divorce decree, the finding of the trial court in this instance could be sustained.

(2) We feel that if we should adopt the husband's argument and contention in this case that it is necessary for the wife to sue on the foreign judgment and to use the contract as evidence of her rights thereunder, we should be putting too narrow and technical a construction upon the records of the Nevada court. It can be seen from all the decisions of this court, which both the parties assert govern since neither party pleaded the Nevada law, that contracts made between spouses for the settlement of their property rights in contemplation of divorce have a recognized part in our legal structure, King *v.* King, 138 Okl. 40, 280 P. 271, and are not to be stricken down or ignored upon technical grounds, but on the contrary shall receive every consideration commensurate with the decree entered in the case. In this instance since the decree did not attempt to set out in detail within its four corners the terms of the contract but the Nevada court contented itself with directing that the contract be obeyed and executed, we feel that the recognition of the wife's right to sue upon that contract in this State does not in anywise lessen the finality or dignity of the Nevada judgment nor impinge upon its province.

The judgment of the trial court is reversed and the cause is remanded for further proceedings not inconsistent with the views expressed herein.

GIBSON, C. J., HURST, V. C. J., and RILEY, WELCH, CORN, DAVISON, and ARNOLD, JJ., concur.

(1643)

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